

Statement of Retired Judges of the Polish Constitutional Tribunal

27 retired judges of the Polish
Constitutional Tribunal

2021-10-11T15:28:59

10 October 2021

On 7 October 2021, the Constitutional Tribunal issued a judgment in case K 3/21 concerning the place of EU law in the Polish legal order. The judgment caused great public concern due to its foreseeable devastating consequences for the position of the Republic of Poland as a Member State of the European Union.

The retired judges of the Constitutional Tribunal fully share this concern. In addition, however, they consider it their duty to correct the many false assertions contained in the judgment, its oral reasoning and the comments of representatives of political power.

Thus:

- It is not true that the judgment of the Constitutional Tribunal of 7 October 2021 was issued in order to guarantee the supremacy of the Constitution over EU law, since such a position of the Constitution has been sufficiently established in the previous case law of the Tribunal (in cases K 18/04, K 32/09, SK 45/09);
- It is not true that the judgment of the Constitutional Tribunal of 7 October 2021 itself falls within the competence of the Tribunal and is consistent with the Constitution;
- It is not true that EU law and the previous case law of the CJEU question or violate the supremacy of the Constitution in the Polish legal order;
- It is not true that the CJEU requires Polish courts to desist from observing and applying the Constitution as the supreme law of the Republic;
- It is not true that the application of EU law by Polish courts cannot be reconciled with their application of the Constitution;
- It is not true that the questioning by EU institutions of the breach by Polish statutes and practice of their application of the principles of independence of Polish judges, who also adjudicate in the fields covered by Union law, goes beyond the competence conferred on the European Union by Article 90(1) of the Constitution;
- It is not true that European Union law and the case-law of the CJEU encroach upon the regulation of the organisation of justice in Poland, since the defence of judicial independence is not part of the organisation of justice;
- it is not true that the judgment of the Constitutional Tribunal of 7 October 2021 will be able to produce legal effects other than exerting pressure on the judicial activity of Polish judges and threatening them with disciplinary proceedings;

- It is not true that the Constitutional Tribunal has the authority to review the constitutionality of CJEU rulings and to decide whether Poland, as a Member State, should selectively respect CJEU case law;
- it is not true that constitutional courts of other Member States in matters concerning relations between national law and EU law have issued judgments similar to the one issued by the Constitutional Tribunal on October 7, 2021.

Stanisław Biernat

Teresa Dąbowska-Romanowska

Kazimierz Działo

Lech Garlicki

Mirosław Granat

Wojciech Hermeliński

Adam Jamróz

Stefan Jaworski

Leon Kieres

Biruta Lewaszkiewicz-Petrykowska

Wojciech Kępcowski

Ewa Kłowska

Marek Mazurkiewicz

Andrzej Maczyński

Janusz Niemcewicz

Małgorzata Pyziak-Szafnicka

Stanisław Rymar

Ferdynand Rymarz

Andrzej Rzepliński

Jerzy Stępień

Piotr Tuleja

Sławomira Wronkowska-Jankiewicz

Mirosław Wyrzykowski

Bohdan Zdziennicki

Andrzej Zoll

Marek Zubik

The Polish version of this statement has been published on konstytucyjny.pl and by [Rzeczpospolita](#).

